

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

RLI INSURANCE COMPANY

Plaintiff

vs.

FIFTH THIRD BANCORP

Defendant

**FIFTH THIRD BANCORP, an Ohio
Corporation, and FIFTH THIRD BANK,
an Ohio Banking Corporation**

Plaintiff

vs.

**CERTAIN UNDERWRITERS AT
LLOYD'S SUBSCRIBING TO POLICY
B0509QA048710, B0509QA051310,
81906760, et al.**

Defendants

Civil Action No. **1:14cv802**

Judge: **Sandra S. Beckwith**

Magistrate: **Stephanie K. Bowman**

Civil Action No. **1:14cv869**

MOTION TO CONSOLIDATE

Plaintiff Fifth Third Bancorp and Fifth Third Bank ("Fifth Third"), by and through counsel, hereby move the Court pursuant to Rule 42(a) of the Federal Rules of Civil Procedure to consolidate *Fifth Third Bancorp, et al. v. Certain Underwriters at Lloyds, etc., et al.*, Civil Action No. 1:14cv869, with *RLI Insurance Company v. Fifth Third Bancorp*, Civil Action No. 1:14cv802, as the two cases involve common questions of fact and law and call for a determination of the same or substantially identical questions of fact and law.

RESPECTFULLY SUBMITTED,

/S/ Mark J. Byrne

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MEMORANDUM

Case No. 1:14cv869 is a breach of contract action for damages caused by the fraudulent acts of Fifth Third's former employee, Matthew P. Ross ("Ross"), and the alleged failure of the Defendants Certain Underwriters at Lloyd's Subscribing to Policy Numbers B0509QA048710, B0509QA051310 and 81906760, AXIS Insurance Company, Ace Insurance Company, Federal

Insurance Company Continental Insurance Company, Fidelity and Deposit Insurance Company, and St. Paul Mercury Insurance Company to pay Fifth Third's alleged losses pursuant to the terms of three Financial Institution Bonds that cover the losses. Fifth Third seeks indemnification and reimbursement for their losses and expenses it claims were caused by Ross and based upon the Defendants' respective obligations under the Financial Institution Bonds.

Similarly, Case No. 1:14cv802, RLI Insurance Company ("RLI") seeks a declaratory judgment action against Fifth Third Bancorp regarding Fifth Third's claim against RLI for a loss Fifth Third sustained due to alleged dishonest acts committed by Ross. The alleged dishonest acts in this case resulted in a counterclaim by Fifth Third against RLI pursuant to financial bonds issued by RLI.

Pursuant to Southern District of Ohio Civil Rule 3.1(b), Fifth Third's counsel identified Case No. 1:14cv802 as a related case to Case No. 1:14cv869 because the cases: (1) arise from the same or substantially identical transactions, happenings, or events; (2) call for a determination of the same or substantially identical questions of law and fact; (3) would entail a substantial duplication of effort and expense by the Court and the parties if heard by different judges; (4) seek relief that could result in a party being subject to conflicting orders of this Court. Both cases were assigned to Judge Beckwith's docket. Judge Beckwith determined that the cases are related and they shall both remain on her docket. (Case No. 1:14cv869) (Doc. 7).

Rule 42(a) of the Federal Rules of Civil Procedure provides that the Court may consolidate actions that involve common questions of law or fact. Both cases involve common questions of law and fact. As such, Fifth Third Bancorp and Fifth Third Bank request that this Court consolidate the cases. Counsel for Continental Insurance Company, Fidelity and Deposit

Insurance Company and St. Paul Mercury Insurance Company does not oppose the motion in Case No. 1:14cv869.

RESPECTFULLY SUBMITTED,

/S/ Mark J. Byrne

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CERTIFICATE OF SERVICE

I hereby certify that on December 19, 2014, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System, which will send notification of such filing to the following:

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I further certify that on the December 9, 2014, the foregoing has been forwarded via ordinary United States Mail to the following:

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